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No. 159.

In the Supreme Court of the United States.

OCTOBER TERM, 1906.

D. S. OSBORNE ET AL., TRUSTEES OF CARRICK ACADEMY, PLAINTIFFS IN ERROR,

vs.

R. A. CLARK AND WINCHESTER NORMAL COLLEGE, DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

ASSIGNMENT OF ERROR, BRIEF, AND ARGUMENT FOR PLAINTIFFS IN ERROR.

No. 159.

In the Supreme Court of the United States.

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D. S. OSBORNE ET AL., TRUSTEES OF CARRICK ACADEMY,
Plaintiffs in Error,

vs.

R. A. CLARK ET AL.,
Defendants in Error.

In Error to the Supreme Court of Tennessee.

BRIEF AND ARGUMENT FOR PLAINTIFFS IN ERROR.

STATEMENT OF THE CASE.

May it please the Court:

This cause is here on writ of error to the Supreme Court of Tennessee.

The original bill in this cause was filed in the Chancery Court of Franklin County, Tennessee, by the plaintiffs in error D. S. Osborne and others as trustees of Carrick Academy.

The object of the bill was to have annulled a lease of the property of said Carrick Academy, consisting of school buildings and real estate situated in Winchester, Tennessee, which lease had been executed to the defendant Winchester Normal College by virtue of an act of the General Assembly of th State of Tennessee passed in the year 1881 authorizing said lease.

The question is, whether or not, the legislature of Tennessee ha dauthority to authorize the execution of the lease complained of.

On April 18, 1806, the President of the United States approved an act of the Congress which ceded to the State of Tennessee certain public lands situated within the boundaries of the said State. Certain conditions were attached to this cession, the second of which was that the State of Tennessee should appropriate one hundred thousand acres of said land for the use of two colleges. On in East Tennessee, and one in West Tennessee (now Middle Tennessee) to be established by the legislature of the State, and—

"One hundred thousand acres in one tract within the limits last aforesaid for the use of academies, one in each county, in said State to be established by the legislature thereof; said several tracts shall be located on lands to which the Indian title has been extinguished; and subject to the disposition of the legislature of the State. But shall not be granted or sold for less than $2.00 per acre, and the proceeds of the sales of the lands aforesaid shall be invested in funds for the respective uses aforesaid forever."

This cession was ratified and accepted by an act of the legislature of Tennessee, passed and approved on September 6, 1806.

Scott's Laws of Tennessee, pp. 936-939.

For the convenience of the court this act is attached as an appendix to this brief.

On September 13, 1806, the General Assembly of the State passed an act incorporating academies and appointing trustees therefor, in all of the existing counties of the State.

After setting out the names of the various academies and the trustees appointed, said charter provides as follows:

"2. Be it enacted, That the trustees of each of said academies, and their successors, by the names aforesaid, shall be capable in law, to purchase, receive, and hold to them and their successors forever, any lands, tenements, rents, goods or chattels, which shall be given or devised to, or purchased by, them for the said academies.

The said trustees by the names aforesaid, may sue and be sued, plead and be impleaded in any court of law or equity; they shall have power from time to time to establish such by-laws, rules and ordinances, not contrary to the laws and constitution of this State, as they shall judge necessary for the good government of the

said academies, and to appoint a president, secretary, tutors, treasurer, and other persons necessary for conducting the business of the institution. A majority of said trustees shall constitute a board to determine upon any matter relative to the establishment, government, or support of their respective academies; but no real estate belonging to either of the said academies shall be disposed of, unless two-thirds of the trustees thereof concur in opinion thereon. Upon the death, resignation, or other legal disability of any of the said trustees, hereby, or which may hereafter be appointed, the vacancy thereby occasioned shall be supplied by the next, or any succeeding General Assembly after such vacancy may occur; but may, nevertheless, be supplied by the remaining trustees, or a majority of them, until such vacancy, or vacancies shall be supplied by the legislature as aforesaid.

The several boards of trustees shall each elect a treasurer, who shall receive all monies accruing to the said academies, and property delivered to his care, and pay and deliver the same to the order of the said trustees; and before he enters on the execution of the duties of his office, shall give bond and security for such sum as the board of trustees by whom he is appointed shall direct, payable to them and their successors, and conditioned for the faithful discharge of the trust reposed in him, and that he will, when required by the said trustees, render to them a true account of all monies, goods and chattels received by him on account of, and for the use of said academy; and the treasurer shall receive such salary as may be allowed and fixed by the trustees.

3. Be it enacted, That the said trustees shall have power to fix on and purchase a site for their respective academies, and to take and receive subscriptions for paying for the same as well as for the purpose of erecting and building thereto; and if any person shall neglect or refuse to pay the money by him subscribed for that purpose, it shall be lawful for the said trustees to recover the same by warrant before a justice of the peace, where the subscription shall not exceed fifty dollars; and where it shall exceed that sum, by motion in the court where the delinquent subscriber resides: Provided, the party has ten days previous notice of such motion; and if the treasurer shall fail to render, when thereunto required, a just and true account of all monies, goods and chattels, which have come to his hands by virtue of his office, and also all expenditures relatives to the said academy, he shall on such failure, be subject to a judgment on motion, in any court of record in this State, and executions may thereupon be awarded in like manner as against sheriffs for the non-payment of public taxes.

4. Be it enacted, That the legislature may from time to time, at periods not less than two years distant from each other, appoint two additional trustees to each board: Provided, the number of trustees for any of the aforesaid academies, shall never exceed thirteen.

5. Be it enacted, That until a president shall be elected for each of the said academies, and shall have entered upon the duties of his office; and also, in all cases of a vacancy, or the absence of the president, the said trustees shall appoint one of their members to preside in their meetings, and all the doings and acts of the trustees, while acting under such circumstances, shall be considered in law as the doings and acts of the board, as fully and completely as when the president of the academy shall be in office and preside.

6. Be it enacted, That it shall be the duty of the first person named as trustees for each academy by this act established, to fix the time for holding the first meeting of said board, which shall be at the court house of the county where such academy is established, or at the place of holding court for said county, of which he shall give notice in writing to each member, at least tendays previous to such meeting.

7. Be it enacted, That this act shall be deemed a public act, and as such shall be judicially taken notice of without special pleading, in all the courts of law and equity within this State."

Scott's Laws of Tennessee, vol: 1, 934-936.

Afterwards the General Assembly of Tennessee at its session of 1809, passed an act incorporating with others, the "Trustees of Carrick Academy" in the following words:

"Be it enacted, By the General Assembly of the State of Tennessee, that William Meckliff, Jas. Hunt, Jas. Cunningham, Richard Colburn, Christopher Butler, and George Taylor shall be and they are hereby constituted a body politic and corporate to be known by the name of the trustees of Carrick Academy of the County of Franklin.

Sec. 2. Be it enacted that the trustees of each of the academies aforesaid and their successors by the name aforesaid, shall have the same powers, prerogatives and immunities and be subject to the same rules, regulations and restrictions that are given to and prescribed for the trustees of the academies of the other counties of this State by the act to establish academies in the several coun-

ties of this State and for the appointment of trustees thereof, passed September 13, 1806."

Chapter 109 of the acts of 1809, vol. 1, Scott's Laws of Tennessee, p. 1198.

On November 18, 1817, the General Assembly passed an act authorizing the county courts of the various counties to appoint trustees for the academies situated therein when a vacancy should occur on account of death, resignation, or removal.

Vol. 2, Scott's Laws of Tennessee, p. 393.

The bill in this cause alleged that after the incorporation of the trustees of Carrick Academy as herein before recited, the trustees named in the charter accepted the trust, and thereafter acquired a certain tract of land situated in the town of Winchester, Franklin County, Tenn., the description of which is given in the bill, upon which it is alleged in the bill, said trustees erected a substantial brick building, and with its pro rata of the funds arising from the sale of the academy lands, and means received from other sources, the trustees conducted in said building a successful school for a period of years and until the fund arising from the sale of academy lands was exhausted, the operation of the academy under the direction of its trustees continued up to the breaking out of the war between the States."

The bill alleged that after the Civil War, the property was used for some time for public schools, and when not so used, it was leased to individuals to be used and was used for private schools until 1870, when it was taken possession of by the defendant, R. A. Clark, who used the property without any right, or title in running a school called Winchester Normal College.

In 1881 the General Assembly of Tennessee passed the following act. (Acts of General Assembly of Tennessee, 1881, chapter 63, p. 76).

"An act to authorize the trustees of Carrick Academy to lease the academy property to the trustees of the Winchester Normal College.

Section 1. Be it enacted by the General Assembly of the State of Tennessee that the trustees of Carrick Academy are hereby authorized to lease the academy property to the trustees of the Winchester Normal College for a period not exceeding fifty years.

Sec. 2. Be it further enacted, that if the lease is made it shall be the duty of the trustees of said college to keep the property in good condition and free from all debt or incumbrance of any kind, and a failure to comply with these requirements shall render the lease null and void."

Pursuant to this act, the trustees of Carrick Academy executed the following lease contract:

"Whereas the undersigned (John Simmons), J. L. Baugh, G. G. Phillips, T. J. Gaines and W. W. Garner are the trustees of Carrick Academy, a corporation incorporated by the legislature of Tennessee, and whereas, the legislature passed March 30, 1881, and approved 14th of April, 1881, an act providing as follows: "That the trustees of Carrick Academy are hereby authorized to lease the academy property to the Winchester Normal College for a period not exceeding fifty years; that if the lease is made it shall be the duty of the trustees of the said college to keep the property in good condition, and free from debt or incumbrance of any kind, and a failure to comply with these requirements shall render the lease null and void," and whereas, the Winchester Normal College is a corporation incorporated under the laws of the State of Tennessee, and the trustees thereof are as follows: B. Dufield, T. J. Gaines, W. W. Garner, G. G. Phillips, J. K. Bennett, W. H. Brannan, J. L. Baugh, J. M. Anderson, J. Kasserman, John Simmons, A. S. Marks, H. R. Moore, Henry Finch, William Taylor, W. B. Gray, Jas. H. Davis, H. G. Hampton, C. C. Estill, Jas. H. Holman, J. B. Fitzpatrick, S. D. Mather; and whereas, the board of trustees of the Winchester Normal College by resolution have agreed to accept the lease provided for in said act upon the terms and conditions prescribed therein; and whereas, by a lease existing when said act was passed to J. W. Terrill, R. A. Clark and J. M. Bledsoe, were entitled to the property until the 10th day of May, 1893; now, therefore, in consideration of these premises aforesaid and for the further consideration that the said Winchester Normal College and the trustees thereof agreed to have and put on said property valuable improvements, and have agreed to comply with the requirements of said act, we, the undersigned as trustees of Carrick Academy, and in persuance of the power vested in us by said act, do hereby lease to the trustees of the Winchester Normal College, for a period of fifty years the academy property belonging to Carrick Academy, and consisting of a lot situated within the corporate limits of Winchester, containing about five acres, more or less, bounded on one side by Jefferson street, on another by a lot of Wm.

McNabb, on another by lot of Jas. M. Russey, and on another by a street between herein conveyed and the property on Miss Julia Curl and Miss Susan Bethel, together with all the improvements hereon, and *it is intended that this lease shall be as full and effective as is authorized by said act, but no further or otherwise.*

This 22nd day of December, 1881.

Witnesses to W. W. Garner's signature:

M. P. Hines, S. W. Houghton, T. J. Gaines, J. L. Baugh, G. G. Phillips, W. W. Garner."

R. pp. 14-15.

It was to annul this lease that the bill was filed.

The bill alleged that the Winchester Normal College was but a conduit through which it was intended for the property to pass, and through which it did pass immediately into the hands of the defendant, R. A. Clark. It was charged that the said R. A. Clark went into the possession of this property which was thus diverted from the uses and purposes contemplated by its charter, by the United States government in the act referred to, and by those who had contributed to the institution, and that the property had from that time until the filing of the bill, been used and operated by said R. A. Clark in running a private school for his own use. It was charged that he had in no manner used the property for the benefit of those for whose use the corporation was created and the academy endowed, but on the contrary the said defendant had grown rich in thus using the property for his own private benefit.

The bill sought to recover the property and to recover rents, and if necessary to have the property sold and the rents and proceeds applied under the orders and decrees of the court to the education of the children of Franklin County, as contemplated by the founders of the institution.

The bill attacked the validity of the act of 1881 authorizing this lease, upon various grounds, but so far as the jurisdiction of this court is concerned, the substance of the objection to the act was that the General Assembly of Tennessee had no authority to authorize the taking of the property of this corporation for the private use of another. The defendant demurred to the bill, assigning several causes of demurrer. R., pp. 16-17.

But the real question involved was whether the trustees of Carrick Academy was a public corporation which the State of Tennessee, through its General Assembly, had a right to control, whose existence it had a right to terminate, and whose property it had a right to dispose of at will.

The Chancellor overruled the demurrers and sustained the bill.

Rec. p. 18.

The court of Chancery Appeals also overruled the demurrers and held that Carrick Academy was a private corporation and that under the principles of the Dartmouth College case (4 Wheaton, 518) the General Assembly of Tennessee had no authority to authorize the diversion of this fund from the corporation to which it had been conveyed and from the purposes contemplated by its charter and its founders. R. pp. 24-35.

The Supreme Court of the State on appeal reversed this holding, sustained the demurrers, and dismissed the bill.

That Court held that the act incorporating the trustees of Carrick Academy was not a contract and did not create a private corporation but a public corporation, subject to the absolute control of the legislature of the State, and hence it had a right to authorize the lease, or conveyance of the property as it did in the act of 1881 complained of. R. pp. 35-43.

ASSIGNMENT OF ERRORS.

Complainants have assigned errors in this Court as follows:

R. pp. 3-5.

I.

That said Court erred in finding and decreeing that the said complainants were not entitled to the relief sought in and by their bill ,and in denying them such relief and dismissing their said bill with costs.

II.

That the Supreme Court erred in finding and adjuding that Carrick Academy, of the County of Franklin, incorporated by the Legislature of the State of Tennessee, was a mere educational agency of the State, and was a public corporation under the control of the Legislature, and that Chapter sixty-three of the Acts of the General Assembly of 1881, authorizing the Trustees of said Academy to lease the Academy property to the Trustees of the Winchester Normal College is valid and constitutional; and that the

lease contract made by the Trustees of said Academy to the Trustees of said College, under the authority of said Act of 1881, was valid and binding on said Academy corporation.

III.

Because the Court did not find and adjudge that Carrick Academy, of the County of Franklin, is a private corporation, and its charter the declaration of a trust and a contract, and that the Act of the General Assembly of the State of Tennessee, being Chapter sixty-three of the Acts of 1881, entitled: "An Act to authorize the Trustees of Carrick Academy to lease the Academy property to the Winchester Normal College," was in violation of the contract clause of the Federal Constitution, and diverted the trust fund that said Academy corporation was chartered to administer, and repugnant to section 11 of the Act of Congress approved April 18th, 1806, entitled: "An Act to authorize the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same;" and impaired the contract to which the donors, trustees of said Academy corporation, the beneficiaries and the State were parties; and that the lease contract made under the authority of said Act of 1881 was null and void.

IV.

That in the Chancery Court held at Winchester, in Franklin County, Tennessee, being the Court which had and exercised original jurisdiction of said cause, said several complainants being the plaintiffs in error herein, suing as aforesaid, specifically set up and claimed that Carrick Academy, of the County of Franklin, was organized under the laws of the State of Tennessee to administer a trust, and that its charter was the declaration of a trust, and a contract to which the donors, the Trustees, the beneficiaries and the State were parties; that the act of he General Assembly of said State passed March 30, 1881, and approved April 14th, 1881, entitled. "An Act to authorize the Trustees of Carrick Academy to lease the Academy property to the Trustees of the Winchester Normal College," being Chapter sixtey-three of the Acts of 1881, was unconstitutional and void, because it impaired the obligation of said contract and was repugnant to Section X, Article I of the Constitution of the United States, and in contravention of Section 2 of the Act of Congress approved April 18th, 1806, entitled: "An Act to authorize the State of Tennessee to issue grants to per-

fect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same"; and complainants being plaintiffs in error herein, questioned the validity of the authority of the Trustees of said Academy, exercised under said Act upon the ground of its being repugnant to the Constitution of the Uniter States, and in contravention of Section 2 of said Act of Congress; and the decision of the said Chancery Court at Winchester, in Franklin County, Tennessee, was against the validity of said Statute and the authority exercsed thereunder, so far as it affected complainants, and in favor of the immunity claimed by emoplainants; but upon appeal to the said Supreme Court of the State of Tennessee, the decision of the Supreme Court was in favor of the validity of said Statute, and the authority exervised thereunder, and against the privilege and immunity and right claimed by the said complainants under the said Constitution and laws of the United States, and particularly under the contract clause of said Constitution, and the Act of Congress aforesaid; and said complainants say that the said Supreme Court erred in deciding in favor of the validity of said Statute of the State of Tennessee, and of the authorty exercised thereunder, and against the rights, privileges and immunities set up and claimed by said complainants, under aforesaid provision of the Constitution of the United States, and the Act of Congress aforesaid.

ARGUMENT FOR THE COMPLAINANTS.

In delvering the opinion of the Supreme Court of Tennessee ni this cause, the learned Chief Justice, discussing the distinction between private and public corporations, said:

"It is apparent that all beneficial interests both in the franchises and the property of corporations must be considered, when these corporations are reduced to their last analysis, as vested in natural persons—either in the people at large or in individuals. It is in this view that they are divided into public and private corporations.

"Private corporations are those created for the immediate benefit and advantages of the individuals constituting them, and the franchises conferred are to be exercised for their advantage. The corporation stands to them in the relation of trustee holding

the property owned by it for, and dividing the profits arising from its management and the employment of its franchises for, those individuals as *cestuis que trust*. Upon the other hand, public corporations are created for public purposes, and the property controlled by them is devoted to the objects for which they are created. The corporators have no private beneficial interest either in the franchises granted or the property controlled. The only private right which an individual can have in such a corporation is the right of being and acting as a corporator. So far as the property of the corporation is concerned, the interest which the corporators have as individuals is that common interest which all citizens have in property belonging to the State. Nor is the character of this interest affected by the source from which the property comes. A purchase by or a gift of property to the corporation is in reality a purchase by or a gift to the public, and is to be administered by the corporation as an agency of the State."

(Record p. 40).

With the greatest respect for the learned Court and the able Chief Justice who delivered the opnion, we submit that he is in error in the distinction he here seeks to make between private and public corporations.

We insist that a private corporation might have every element he here points out as characteristics of public corporations. He is in no wise correct in his definition of either public or private corporations. In the leading case on this subject—the Trustees of Dartmouth College vs. Woodward, 4 Wheaton, page 514 *et seq.*—the distinction between public and private corporations was fully discussed by the great lawyers engaged in that famous cause and in the opinions of the members of the Court.

Chief Justice Marshall said:

"Strictly speaking, public corporations are such only as are founded by the Government for public purposes where the whole interests belong to the Government."

Again he said the government would have no right to interfere with or control a corporation or its property, "except where the corporation is, in the strictest sense, public; that is, where its whole interest and franchises are the exclusive property of the Government itself."

Mr. Justice Story in his opinion in that cause said:

"When the corporation is said at bar to be public, it is not

merely meant that the whole community may be proper objects of bounty but that the Government have the sole right as trustees of the public interests, to regulate, direct and control the corporation, its funds and its franchises at its own good will and pleasure. Now ,such an authority does not exist in the Government, except where the corporation is in the strictest sense public; that is, where its whole interests and franchises are the exclusive property and domain of the Government itself."

Again he said:

"Public corporations are generally esteemed such as exist for public or political purposes only, such as towns, cities and counties, and in many respects they are so, although they involve some private interests; but strictly sepaking public corporations are such only as are founded by the Government for public purposes, where the whole interest belongs also to the Government."

And again:

"The charity then in this sense may be public, though it may be administered by private trustees; and for the same reason it may be public, though administered by a private corporation. The fact then that the charity is public affords no proof that the corporation is also public, and the argument so far as it is built on this foundation, falls to the ground."

Mr. Justice Washington, in his opinion in the same cause, said:

"These corporations, civil and eleemosynary, which differ from each other so especially in their nature and constitutions, may very well differ in matters which concern their rights and privileges, and their subjection to public control. The one is the mere creature of public institutions, created exclusively for the public advantage, without other endowments than such as the king or the Government may bestow upon it, and having no other founder or visitor than the king or Government, the *fundator incipiens.*"

This Court is, of course, too familiar with the facts of that case for it to be necessary to discuss the same in detail; but every element which is referred to by the learned Court in the Dartmouth College case as constituting such institution a private, as distinguished from a public corporation, will be found to exist in the case at bar.

In the Dartmouth College case the trustees were appointed by the crown. In this case they were appointed by the Legislature of Tennessee in an act creating the corporation.

In that case the State of New Hampshire was one of the contributors in that it granted a part of the public land to that institution. In this case the State of Tennessee granted nothing and contributed nothing to Carrick Academy. In that case the institution was given the power of perpetual succession. This power was granted the Trustees of Carrick Academy. The charter in that case gives the Trustees the right to receive private donations and buy and sell real estate for the use of the institution. Exactly the same powers were conferred upon the Trustees in this case. In that case the institution was supported by funds contributed by private donors and by the State of New Hampshire. In this case the Academy was supported by private donations and by trust funds arising from the sale of property contributed for this purpose by the Government of the United States.

These principles have not been confined in their application to the peculiar facts developed in the Dartmouth College case, but have been applied by this Court and other leading American Courts to all similar charitable and educational institutions.

In the case of Allen vs. McKeen, 1st Sumner, p. 276 (Federal Cases Vol. 1, case 229, page 489) Mr. Justice Story, sitting at Circuit, held Bowdoin College to be a private corporation, though it was endowed and chartered by the State of Massachusetts.

The provisions of the charter in that case were very similar to those contained in the charter involved in this case, and no reason can be found why that corporation should be treated as private and this as public.

Among other things the learned Justice in delivering the opinion, said:

"Nor does it make any difference that the funds have been generally derived from the bounty of the Government itself. The Government may as well bestow its bounty upon a private corporation for charity as upon a public corporation, and its funds once bestowed upon the former becomes irrevocable precisely in the same manner and to the same extent as if they had been bestowed upon an individual. The Government cannot resume a gift once absolutely made to a private person, neither can it resume a like gift to a private corporation. It is true that the Government may reserve such power in granting a charter, if it chooses so to do, but then the power arises from the very terms of the grant and not from any implied authority derived from the bounty being for general charity, any more than it would from its being for private charity."

A case, however, more directly in point, on account of the similarity of the particular facts in the two cases, is that of the Trustees of Vincennes University vs. The State of Indiana, 14 Howard, p. 267.

In that case the United States Government in ceding certain land to the Territory of Indiana, before the admission of the State of Indiana into the Union, provided that certain parcels of real estate should be reserved for the purpose of establishing a University in that Territory. Afterwards, in 1807, the Legislature of that Territory incorporated the Vincennes University under the name of the "Board of Trustees of the Vincennes University." This act authorized the Trustees to dispose of sai dlands for the use of said University, which was duly established. Afterwards, in 1820, the Legislature of Indiana appointed a superintendent authorized to rent out such portions of said lands which had not been sold, and collect the rents for the same, to be paid into the State treasury. In 1822 the Legislature appointed Commissioners to sell said lands, which was done, and the money was paid into the State treasury. Many years later the Legislature of Indiana, upon the petition of the Trustees of the University, passed an act authorizing said Trustees to bring suit against the State for the recovery of said funds. Suit was brought under this act in 1838. The Supreme Court of Indiana held that these Trustees constituted a puublic corporation, an institution of the State, subject to the control of the General Assembly, and that the property was owned by the State. The reasons assigned by that Court for its holding were very similar to those given in the opinion of the Supreme Court of Tennessee in the case at bar.

On writ of error this Court reversed the holding of the Supreme Court of Indiana, and it was here held that the Trustees of Vincennes University were a private corporation, created such by its charter, and that the State of Indiana had no interest in, or right of control over, said property.

The Court quoted, with approval, from the opinion in the Dartmouth College case and among other things said:

"The seminary township in question was not a donation from the state, but from the United States. It was reserved and designated out of the public lands before they were offered for sale.

And again:

"The legislative power of the territory and state in advancing the public interests was bound to afford all the facilities necessary

to carry out and secure the benign objects of congress in making these township reservations. This was done by a wise and liberal act in regard to the Gibson township. The corporators were vested with all the necessary powers to carry out the trust. And for the purposes of the trust the title became vested in them as soon as they acquired a capacity to receive it. This corporation had no political powers and could in no legal sense be considered as officers of the state."

And again:

"So far as regards the trust confided to the Complainants there is nothing which by construction can make it a public corporation. The donation in no sense proceeded from the state. It was made b ythe Federal government, and is no more subject to state power than if it had been given by an individual for the same purpose. An act of incorporation being necessary would not be withheld to give effect to a private donation of land for the purpose of establishing a literary institution. Its benefits would be enjoyed by the public generally, but this would not make it a public corporation. The Complainants by accepting and exercising their corporate powers acquired certain rights and made certain contracts which could not be impaired by the legislature. They constituted an eleemosynary corporation in which the state has no property and can exercise no power to defeat the trust."

In the case of the Trustees of New Gloucester vs. Bradbury, 11 Maine, p. 118, the question involved was whether the plaintiffs constituted a public or private corporation. The Commonwealth fo Massachusetts had granted to the town of New Gloucester a tract of land for the use of the schools of that town. Afterwards it was thought advisable by the town to have the land sold and on application the legislature of Massachusetts passed an act authorizing the sale of said school lands to raise a fund for the support of the schools of said town. This act appointed trustees for that purpose. They were created into a corporation with power to sell said school lands and use the proceeds for the schools in said town and with power to receive grants and donations for this purpose. They were given the usual powers conferred upon such corporations for this purpose.

The Court held that, notwithstanding the original grant of the lands came from the state, and notwithstanding the use to which the corporation was required to apply its funds was public still the corporation itself was a private one and not subject to the regulation or control of the state.

In the case of Yarmouth vs. North Yarmouth, 34 Maine, p. 114, the legislature of that state incorporated certain parties with their successors as trustees for a school fund in North Yarmouth and authorized them to sell the school lands of said town and convert the proceeds into funds and to apply the income therefrom forever to the schools of that town. Afterwards the legislature passed an act dividing the town and incorporating one portion thereof under the name of Yarmouth and in the same act it ordered that these trustees divide the school fund in the proper proportion between the two towns. The trustees resisted this act on the ground that it was an unconstitutional interference with their rights as a private corporation. The Supreme Court held the act unconstitutional as impairing the charter rights of these trustees. Among other things the Court said:

"The distinction between public and private corporations has reference to their powers and the purposes of their creation. They are public when created for public purposes only, connected with the administration of the government, and where the 'whole interests and franchises are the exclusive property and domain of the government itself."

And again:

"This fund was never in the town but was vested by the act in the trustees as a corporation for the use mentioned forever. They did not constitute a municipal or public corporation, although the object of its creation might have been a public benefit. Their charter was a grant from the state, partaking the nature of a contract, which they accepted, and in which the government had no interest. This was a franchise which involved the right to possess and control property and the right to perpetuate a corporate immorality."

In the case of Cleaveland vs. Stewart et al. in 3rd Georgia, p. 383, the Supreme Court held an academy incorporated by the legislature in that state to be a private corporation, though it derived its funds in part from the state.

Among other things the Court said:

"An incorporated academy founded on private funds is, like a college, a private corporation. It is no denial of this position that they are entitled, under certain conditions, to share in the common fund. This bounty the academy can receive or not. It

is a beneficiary of the state but that gives the state no rights over it."

And again:

"A corporation is public when it has for its object the government of a portion of the state; and although in such a case it involved some private interest, yet as it is endowed with a certain portion of political power, the term public has been deemed appropriate. Another class of public corporations are those which are founded by the public, although not for political or municipal purposes, and the whole interest in which belongs to the government."

In the case of the Board of Education vs. Greenbaum, 39 Illinois, p. 609, suit was brought by Greenbaum & Sons against the "Board of Education of the State of Illinois" to enforce a mechanic's lien on the property of the Normal University of that state. The defense was that this corporation was founded by the state and supported by the funds of the state, and that its property was the property of the state and therefore not subject to a mechanic's lien.

An act was passed in 1857 by the legislature of Illinois establishing a normal university and creating its trustees a corporation styled "The Board of Education of the State of Illinois," and which were given the usual powers conferred on such trustees. The superintendent of public instruction of the state was made the secretary of this board and required to make his reports to the General Assembly.

It was provided that the interest on the university and seminary funds of the state should be appropriated for this university and paid from the treasury of the state. Certain other public appropriations were also made. In 1861 the legislature passed an act which recited that by a compact between that state and the United States government in 1818, it was provided that a certain per cent. of the proceeds of the sales of public lands, lying in that state, should be appropriated by the legislature for the encouragement of learning and one-sixth of which was to be bestowed upon a college or university. The act provided that this, with the accrued interest thereon, should be appropriated, according to the intentions of congress, for the use of said Normal University, and further provided that the university should have no power to sell any part of the property or create a debt against the state. It was also provided that each county should be entitled t ofree instruction for two pupils in said university.

The Court in the opinion said:

"From this legislation plaintiffs in error insist that the property of the Normal University is the property of the state in which the corporation have no interest whatever. That it was created for certain public purposes in which the whole state has an interest, and certain rights secured to each county in the state. That the governor by and with the advice and consent of the senate, appoints the trustees who compose the corporation. That the superintendent of public instruction is, ex officio, a member of the Board and the secretary thereof, whose duty it is to report to the legislature the condition and expenditures of the university. The counsel also insists that the legislature have the absolute right to repeal or modify the charter, and from the act of 1861 it is manifest it was not the intention of the legislature that the property held in the name of the boar dshould be sequestered and sold by creditors or others. That the corporation is a mere trustee or agent of the state, to carry out the wishes and intentions of the legislature, and its property can only be used for corporate purposes."

To which insistence the Court responded:

"The view we have taken, after mature consideration of this legislation, differs materially from the plaintiff in error, and though striving to do so, we have not been able to find, in either of these acts, any provisions on which to base such an opinion, or any power reserved to the legislature to repeal or modify this charter.

We regard this university as an eleemosynary institution, founded for the purpose of the gratuitous distribution of knowledge of the art of teaching and conducting common schools, and erected, not at the expense of the state, but of individuals. An agent was to be appointed by the corporation to visit the different cities, villages and other places in the state, deemed eligible for the purpose, to receive donations and proposals for the establishment and maintainance of the university, and its permanent location was to be fixed at the place where the most favorable inducements were offered for that purpose.

The salaries for the instructors and other employes are fixed by the board and no appropriation has ever been made from the state treasury for its maintainance. This is one feature which distinguishes it from other state institutions properly so-called, such as the asylum for the blind, for the insane and for the deaf and dumb, for all which locations were selected by the state, build-

ings erected and furnished, teachers employed and appropriations made out of the public treasury at almost every session of the legislature, as the public acts will show. It is true the state applied the interest of the university and seminary fund to aid in maintaining this university, but that interest did not belong to the state. The state held it as a mere trustee under a compact with the general government, and it was specially devoted by that compact to a college or university."

Again the Court said:

"The reason that the legislature reserved the appointment of the trustees was, doubtless because it had placed in their keeping a fund of which the state was but a trustee, and morally responsible for its proper application."

The question of whether the Board of Education of Illinois was a public or private corporation was again before the Supreme Court of that state in the case of The Board of Education vs. Bakewell, 122 Ills., p. 339.

In that case the legislature by a subsequent act attempted to divert a part of the funds from the university and confer the same upon another, which the Court held could not be done, even with the consent of the corporation itself.

The Court said:

"It would seem to be supposed, here, that the corporation and the legislature together had the right of absolute disposition of this corporat property. But there are other rights and intersts than of these bodies here involved. Appellant is but a trustee of this property, to hold and administer it for the special purposes named in its charter, the education of the teachers for the common schools. The benefactions were devoted by the donors to this special purpose, and be applied to no other. Appellant stands here as representing the donors, and their rights are to be defended and maintained by it. And so with respect to those who are to derive learning from this source, appellant is a trustee for them also. Religion, charity and education are, in the law, legatees or donees, capable of receiving bequests or donations in this form. (Dartmouth College vs. Woodward, 4 Wheat. 643.) Before the courts, it will not be suffered that there shall be any abuse of the trust and it will be seen to that the property shall not be diverted from the object to which it was devoted by the donors. To take this property in question from the Board of Education of the State of

Illinois and give it away to Julia A. Blakewell, would be a clear perversion of the trust upon which the property is held."

In the case of Downing vs The State Board of Agriculture 12 L. R. A., p. 664, decided by the Supreme Court of Indiana in 1891, the question involved was whether the defendant was a public or private corporation.

In 1851 the legislature of Indiana passed an act for the encouragement of agriculture. Several persons were named in the act as a body corporate with perpetual succession, under the name and style of "The Indiana State Board of Agriculture." The Board was to meet at the time named by the governor of the state and organize, and was required to hold state fairs for the benefit of the people of the state. It was further provided that the presidents of each County Agricultural Society should be members of this Board and should meet with the same annually. It was provided that the Board should make an annual report to the General Assembly of the state, as to its condition and make such recommendations as it might deem interesting and useful. One thousand dollars per annum was appropriated out of the treasury of the state for the benefit of the Board. Afterwards other appropriations were made and from these appropriations the corporation acquired some property. In 1881 an act was passed abolishing this Board and transferring its funds and assets to a board of another name created by the General Assembly.

The Supreme Court of Indiana held this act to be unconstitutional because said board was a private corporation and not subject to the control of the General Assembly of the state.

The Court in that case reviewed at some length the various authorities on this subject and among other things, said:

"The trustees so elected have no financial interest in the property of the corporation in such a sense as that they can sell it and appropriate the proceeds to their own use, any more than could the trustees of the State University sell and convert the proceeds of the property to their own use. They are simply trustees to manage and control it. The institution, the corporation exists for the benefit of the people of the state, and the law would not allow its purpose to fail by a failure of those charged with the duty of electing the successors; but neither the state by its General Assembly, nor the trustees of the corporation have any right to appropriate the property of the corporation to the use of the state or the individual members of the Board."

In the case of the University of Maryland vs. Williams, 9 Gill & J., pages 365-368, the Supreme Court of Maryland, said:

"A corporation may be private and yet the act or charter contain provisions of a purely public character introduced solely for the public good. A public corporation is one that is created for political purposes, with political powers to be exercised for the purposes connected with the public good, in the administration of the civil government and an instrument of the government, subject to the control of the legislature and its members officers of the government for the administration and discharge of public duties, as in the case of cities, towns, etc."

In reference to the institution involved in that case the Court said: "That the university was established under the direct authority of the state, through a special act of the legislature and that the charter contained provisions of a purely public character, nor yet that the institution was maintianed perpetually at the public expense does not make it a public corporation or constitute its endowment fund a public fund." See also,

State vs. Neff, 28 L. R. A., 409.
Montpelier Academy Trustees vs. George, 1 4La., 395.
Waterman on the Law of Private Corporation, Sec. 17.
Morrowetz on the Law of Private Corporation, Sec. 3-4.
Angell & Ames on Corporations, Sec. 13, 14 and 32.

Tested by these rules it can hardly be insisted that Carrick Academy was a public corporation. It was not organized for municipal or political purposes certainly. Neither was it provided in the charter or intended by the donors ,that this property, in whole or in part, should be the property of the state. It was not endowed bw the state nor has it ever been supported by the state. It is true that this academy, like other academies in the state, was chartered in order to receive a bounty conferred by the United States government, but in chartering this corporation to receive this bounty and other private donations, and in selling the land ceded by the government for this purpose, and conferring the funds upon academies, the state acted only as a trustee, in compliance with its solem ncompact with the general government. This was so held by this Court in the case of the Trustees of the Vincennes University vs. the State of Indiana, *supra*.

By the Supreme Court of Illinois, in the cases of the Board

of Education vs. Bakewell, *supra*. and Board of Education vs. Greenbaum *supra*.

Even if this endowment had come from the state, the state lost its ownership in the same and the right to control it when it conferred the property upon the corporation.

The fact that the corporation was endowed by the state would in no sense make it a public corporation, is held in the cases of:

Trustees vs. Bradbury, *supra*.
Yarmouth vs. North Yarmouth, *supra*.
Downing vs. Indiana State Board, *supra*.
Cleaveland vs. Stewart. *Supra*.
Trustees of Dartmouth College vs. Woodward, *supra*.

One of the reasons given in the opinion of the Supreme Court of Tennessee, why this should be treated as a public corporation was that the original trustees were named by the legislature and it was provided that the legislature should fill vacancies in the board when such should occur from death or resignation.

In the Dartmouth College case the original trustees were appointed by the crown; most of them were public officials.

In all of the other cases hereinbefore cited, the trustees were appointed by the various legislatures in granting the charters. In incorporating the "Board of Education of the State of Illinois," the legislature reserved the right to fill vacancies in the board of trustees, yet the Supreme Court of that state held, in the cases cited, that it was a private corporation and that the reservation of this right of appointing trustees did not change the character of the corporation, or in any manner make it a state institution.

Board of Education vs. Greenbaum, *supra*.
Board of Education vs. Bakewell, *supra*.

One of the reasons insisted on in the opinion of the Supreme Court of Tennessee, as indicating that this was a public corporation, is that the General Assembly passed an act in which it attempted to regulate the manner in which students should be expelled from these academies.

In the first place this act was passed after the granting of the charters and it could not effect the rights of corporations which were already in existence. But even if this provision had been in the charter, it would not be material. In the Dartmouth College case the charter not only provided for an oath to be taken by all

officials, professors and tutors in the school but expressly provided that no religious test should ever be applied in admitting students in the college.

Again it is stated, in this opinion, that the academy must be treated as a public corporation because the Legislature of Tennessee has so treated similar corporations.

In all cases we have cited the various legislatures have attempted to treat the corporation, in question, as institutions of the State.

This was true in the Dartmouth College case and it was insisted by the Court of last resort in the State of New Hampshire, just as held by the Supreme Court of Tennessee, in its opinion, that Dartmouth College was a public institution of the State of New Hampshire.

In the Vincennes University case, the State of Indiana had for more than twenty years treated the real estate of that university as State property and had collected, and used, the rents and proceeds arising from the same, as property of the State. In the first Illinois case cited, the corporation itself insisted that it was a public corporation and its property exempt from legal process.

In the last case herein cited from Illinois, both the State and the Board had attempted to treat the property as State property.

The State of Indiana treated the property of the Indiana State Board of Agriculture as public property, and as such attempted, by an act of its General Assembly, to confer the same upon another corporation.

This was also true in both of the Maine cases cited, and in none of these cases was it held that because the State had *assumed* this right, it therefore *had* the right.

Nor can the argument be sound that because the State had made an illegal disposition of the property of other institutions, it was therefore within its power to confiscate the property of this institution. Such an argument carries with it its own condemnation.

It is insisted by the Supreme Court of Tennessee that Carrick Academy is not a private corporation, and that the trustees have no right to maintain this suit, because they have no personal interest in the corporation or its property. In the Dartmouth College case, Chief Justice Marshall said:

"The founders of the College, at least those whose contributions were in money have parted with the property bestowed upon it, and their representatives have no interest in that property. The

donors of the land are equally without interest, so long as the corporation shall exist. Could they be found, they are not affected by any alteration in its consitution, and are probably regardless of its form or of its existence. The students are fluctuating, and no individual among our youth has a vested interest in the institution, which can be asserted in a court of justice. Neither the founders of the college nor the youth for whose benefit it was founded complain in the alteration in its charter or think themselves injured by it. The trustees alone complain, and the trustees have no beneficial interest to be protected."

And again, along the same line in discussing the rights of the donors, the learned Chief Justice said:

"The consideration for which they stipulated is the perpetual application of the fund to its object, in the mode prescribed by themselves. Their descendants may take no interest in the preservation of this consideration. But in this respect their descendants are not their representatives. They are represented by the corporation. The corporation is the assignee of their rights, stands in thir place, and distributes their bounty, as they would themselves have distributed it had they been immortal. So with respect to the students who are to derive their learning from this source. The corporation is a trustee for them also. Their potential rights, which, taken distributively, are imperceptible, amount collectively to a most important interest. These are in the aggregate, to be exercised, asserted and protected b ythe corporation."

Mr. Justice Storey in his opinion in the same case said:

"The corporation was expressly created for the purpose of distributing in perpetuity the charitable donations of private benefactors. By the terms of the charter, the trustees and their successors, in their corporate capacity, were to receive, hold and exclusively manage, all the funds so contribuated. The crown then, upon the face of the charter, pledged its faith that the donations of private benefactors, should be perpetually devoted to their original purposes, without any interference on its own part, and should be forever administered by the trustees of the corporation, unless its corporate franchise should be taken away by due process of law. From the very nature of the case, therefore, there was an implied contract on the part of the crown with every benefactor, that if he would give his money, it would be a charity protected by the charter, and be administered by the corporation according to the general law of the land. As soon then as a donation was made to the corporation,

there was an implied contract spring up, and founded on a valuable consideration, that the crown would not revoke, or alter its charter, or change its administration, without the consent of the corporation. There was also an implied contract between the corporation itself, and every benefactor upon a like consideration, that it would administer his bounty according to the terms, and for the objects stipulated in the charter."

Now in the case at bar, the State of Tennessee provided in its charter that the trustees of this academy were empowered to receive by purchase or gift both real estate and personal property for the uses and purposes of the corporation. It was not provided in this charter that this property was to be received for the State or subject to the future distribution of the General Assembly. On the contrary, it is held that they are empowered "to purchase, receive, and hold to *them and their successors forever* any lands, tenements, rents ,goods or chattels which should be given or devised to, or purchased by them for the use of said academy."

Here is an express contract that any property conveyed or given to this corporation should be held by it forever. Upon the faith of this contract, this academy received the property in controversy.

As stated in the opinions of Chief Justice Marshall and Mr. Justice Storey, above quoted, this was a contract between the State of Tennessee and the corporation, that said corporation should receive and hold forever, all property conveyed to it. It was a contract between the State of Tennessee and all proposed or future contributors, or donors, that all property conveyed to this corporation should be held by the corporation forever, without molestation from the State or alteration of the charter rights conferred. It created a contract between the corporation and all the donors that the corporation should take and hold the property for the uses and purposes set forth in its charter forever, or if sold, its *proceeds* were to be applied to the uses and purposes set forth in the charter. It was a contract between the corporation and the beneficiaries contemplated by the charter and by the donors, that the corporation would take and hold the property for said uses and purposes forever. And for these donors, this corporation is a trustee and has a right to sue, and for the beneficiaries of these trusts, this corporation is a trustee and has a right to sue.

As stated by the Court above quoted this corporation represents the rights of all parties in interest, and for all it has a right to bring this action to protect these trusts. As has hereinbefore been shown,

the State could not destroy this trust neither could the State and the corporation jointly do this.

In this case, however, the former trustees who made the lease we are complaining of, did not attempt or pretend to do so under their charter power. They knew, of course, the rights given them by the charter was only to sell and convey the property for the purpose of their trusts. They were the trustees of Winchester Normal College as well as the trustees of Carrick Academy. They realized, of course, that they had neither the legal nor moral right to convey this property to themselves and they did not attempt to do this.

The lease we are complaining of recites on its face that it was executed pursuant to the authority conferred by the act of the Legislature, passed March 30th, 1881, and the contract concludes: *"It is intended that this lease should be as full and effective as is authorized by said act, but no further or otherwise."*

This lease is, therefore void unless the General Assembly of Tennessee had a right to destroy this corporation, terminate its existence, and confer its property upon a private corporation or private individual.

We earnestly submit that it is neither just nor legal that this property, conveyed to this corporation upon the faith of the solemn contract between the State of Tennessee and the donors who intended it for the school children of Franklin County, should be taken from them and bestowed upon private individuals. In doing this, the State violated its own solemn contract as set forth in the charter, breached its contract with the Federal Government, destroyed the rights of the school children of Franklin County, created upon the faith of this charter, and violated the contract clause of the Federal Constitution. The decree of the Supreme Court of Tennessee should be reversed.

Respectfully submitted,

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APPENDIX.

CHAP. 10.—An act to ratify and confirm an act of the Congress of the United States of America, entitled, "An act to authorise the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same." (Passed September 6th, 1806.)

Whereas the United States, in Congress assembled, on the eighteenth day of April, in the year of our Lord, one thousand eight hundred and six, passed an act, entitled "An act to authorise the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims, to the vacant and unappropriated lands within the same." In the words following to-wit: "An act to authorise the State of Tennessee to issue grants and perfect titles to certain lands therein described, and to settle the claims to the vacant and unappropriated lands within the same.

1. *Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled,* that for the purpose of defining the limits of the vacant and unappropriated lands in the State of Tennessee, hereafter to be subject to the sole and entire disposition of the United States, the following line be, and hereby is established, to wit: Beginning at the place where the eastern or main branch of Elk river shall intersect the boundary line of the State of Tennessee; from thence running due north, until said line shall intersect the northern or main branch of Duck river; thence down the waters of Duck river, to the military boundary line, as established by the seventh section of an act of the State of North Carolina, entitled, "An act for the relief of the officers and soldiers of the Continental line, and for other purposes," (passed in the year one thousand seven hundred and eight-three) thence with the military boundary line, west, to the place where it intersects the Tennessee river; thence down the waters of the river Tennessee, to the place where the same intersects the northern boundary line of the State of Tennessee.

2. *And be it further enacted,* That upon the Senators and Representatives from the State of Tennessee, by an instrument signed and sealed by them respectively, making known, that in pursuance of the power in them vested by an act of the General Assembly of the State of Tennessee, entitled, "An act to appoint agents to settle the dispute between this State and the United States, relative to the vacant and unappropriated lands within this State, and to procure the relinquishment of the claim of the United States to the same," and by a resolution of the Senate and House of Representatives of the said State of Tennessee, passed in the year one thousand eight hundred and two, as instructions therein, they do, for, and in behalf of the State of Tennessee, and in consideration of the provisions made in this act, agree and declare that all right, title and claim, which the State of Tennessee hath to the lands lying west and south of the lines herein before established, within the limits of the State of Tennessee, shall thereafter forever cease, and that the lands aforesaid shall be and remain at the sole and entire disposition of the United States, and shall be exempted from every disposition or tax made by order, or under the authority of the State of Tennessee, while the same shall remain the property of the United States, and for the term of five years after the same shall be sold; which said instrument shall be approved by the Senate of the United States, and entered at large in their journal, and deposited in the office of the Secretary of State. The United States do thereupon cede and convey to the State of Tennesse, all right, title and claim which the United States have to the territory of the lands lying east and north of the line hereinbefore established, within the limits of the State of Tennessee, subject to the same conditions as are contained in the act of the General Assembly of the State of North Carolina, entitled, "An act for the purpose of ceding to the United States of America, certain western lands therein described," and the said State of Tennessee shall thereupon have as full power and authority to issue grants and perfect titles to all lands lying east and north of the before described line, within the limits of said State, as Congress now have, or the State of Tennessee might have by virtue of an act of the State of North Carolina, entitled, "An act to authorise the State of Tennessee to perfect titles to lands reserved to this State by the cession act," to which said act the assent of Congress is hereby given, so far as is necessary to carry into effect the object of this compact; subject, nevertheless, to the following express conditions, that is to say:

First—That all entries of land, rights of location and warrants of surveys, and all interfering locations which might be removed by

the aforesaid act of cession of the State of North Carolina, and which are good and valid in law, and which were not actually located west and south of the hereinbefore described line, before the twenty-fifth day of February, one thousand seven hundred and ninety; and all interfering grants which are good and valed in law, and which have been located east and north of the said line, shall be located, and the titles thereto perfected within the territory hereby ceded to the State of Tennessee.

Second—That the State of Tennessee shall appropriate one hundred thousand acres, which shall be located in one entire tract within the limits of the lands reserved to the Cherokee Indians, by an act of the State of North Carolina, entitled, "An act for opening the land office for the redemption of specie and other certificates, and discharging the arrears due the army," passed in the year one thousand seven hundred and eighty-three, and shall be for the use of two colleges, one in east and one in west Tennessee, to be established by the Legislature thereof; and one hundred thousand acres in one tract, within the limits last aforesaid, for the use of academies, one in each county in said State, to be established by the Legislature thereof; which said several tracts shall be located on lands to which the Indian title has been extinguished, and subject to the disposition of the Legislature of the State, but shall not be granted or sold for less than two dollars per acre, and the proceeds of the sales of the lands aforesaid, shall be vested in funds for the respective uses aforesaid, forever; and the State of Tennessee, shall moreover, in issuing grants and perfecting titles, locate six hundred and forty acres to every six miles square in the territory hereby ceded, where existing claims will allow the same, which shall be appropriated for the use of schools for the instruction of children forever: *Provided*, That nothing contained in this act shall be so construed as to effect the Indian title, or to subject the United States to the expense of extinguishing the same: *And provided also*, That the lowest price of lands granted or sold within the ceded territory, shall be the same as shall be established by Congress for the lands of the United States: *And provided nevertheless*, That the people residing in said State, south of French Broad and Holston, and west of Big Pigeon rivers, provided for by the constitution of the State of Tennessee, shall be secured in their respective rights of occupancy and pre-emption, and shall receive titles for such quantities as they may respectively claim, including their improvements, not exceeding six hundred and forty acres each, nor exceeding the quantities they have heretofore claimed respectively, according to their conditional lines, where such have been established, at a price not less than one

dollar per acre: *And provided further*, That nothing herein contained shall be construed to enable any person or persons until authorised by the Legislature of the State of Tennessee to locate any warrant issued under the authority of the State of North Carolina, within the limits of the lands reserved to the Cherokee Indians, by the fifth section of the act of said State, entitled "An act for opening the land office for the redemption of specie and other certificates, and discharging the arrears due the army," passed in the year one thousand seven hundred and eighty-three.

3. *And be it further enacted*, That if the territory hereinbefore ceded to the State of Tennessee, shall not contain a sufficient quantity of land fit for cultivation, according to the true intent and meaning of the original act of cession, including the lands within the limits reserved by the State of North Carolina to the Cherokee Indians, to perfect all existing legal claims charged thereon, by the conditions contained in this act of cession, Congress will hereafter provide by law for perfecting such as cannot be located in the territory aforesaid, out of the lands lying west or south of the before described line.

NATHL. MACON,
Speaker of the House of Representatives.

S. SMITH,
President of the Senate, pro tem.

Approved—April 18th, 1806.

TH. JEFFERSON.

THEREFORE, Be it enacted by the General Assembly of the State of Tennessee, That the same hereinbefore recited act, be, and the same is hereby accepted, ratified and confirmed to all intents and purposes, by and on the part of the State of Tennessee, and that the provisions thereof be carried into effect.